

REMARKS***Objections***

Claims 14 and 15 have been amended to correct the informalities pointed out in the Office action. Reconsideration of the objection is requested.

Rejections***102 rejections--Independent claims***

Independent claim 16 was rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. To anticipate, a single prior art reference must disclose each and every element of a subject claim as set forth in the claim. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q. 2d 1949 (Fed. Cir. 1999). It is respectfully submitted that *prima facie* anticipation has not been established with respect to independent claim 16.

Prima facie anticipation has not been established for claim 16 because it has not been shown where Kenner discloses instructions that cause a computer to set a first marker in a transmission, and call a method which provides a handle to the first marker. As would be understood in the art, a handle may provide a pointer to something. For example, in some embodiments of the present invention, a handle provides a pointer to a marker within a broadcast data stream. Specification, page 4, lines 21-22. Similarly, the handle of claim 16 provides a pointer to a first marker; the first marker is set in a transmission. In the Office action, the examiner asserts that the handle in Kenner is the location of memory that stores the result of a ping command and the first marker is the data written in the test packet that is tracked. Paper No. 01202005, page 5. But, the examiner has not asserted or shown that the location of memory points to a marker in the actual *test packet* that is tracked. In other words, it has not been shown where Kenner discloses a handle to a marker set in a transmission. Thus, for at least this reason *prima facie* anticipation has not been established with respect to independent claim 16 or claims dependent thereon.

Under a similar analysis, *prima facie* anticipation has not been established with respect to independent claim 26 or 36, or respective dependent claims. Also, *prima facie* anticipation has not been established with respect to independent claim 26 for the following additional reasons.

First, claim 26 calls for using a handle, tracking a transmission after a first marker. This aspect of claim 26 is not addressed in the Office action. In other words, it has not been shown where Kenner discloses tracking a transmission after a first marker using a handle. Thus, for this additional reason *prima facie* anticipation of claim 26 has not been established.

Second, claim 26 calls for receiving a handle to a first marker that is set in a video transmission. The examiner asserts that "video transmission" does not convey whether a video, audio, or data packet is being marked. This assertion is respectfully traversed. The terms video, audio, and data each have meanings that would be understood in the art. The examiner acknowledges as much in his rejection of claim 16. For example, in the rejection of claim 16, the examiner asserts that Kenner's system must know the difference between a test packet and a regular video data packet. If Kenner's system must know the difference between a test packet and a regular video data packet for the purpose of rejecting claim 16, it is respectfully submitted that the same is true for the rejection of claim 26, especially since the rejection of claim 26 refers to the rejection of claim 16.

There is no indication that Kenner's test packet includes video clip data. For example, Kenner's test packet is used test communications links in a manner that is analogous to the "ping" program. *See* column 27, lines 53-61. In this way, response times for remote SRUs 92 may be determined. *Id.* Kenner does not expressly state that the test packet includes a video clip. In fact, Kenner appears to test communication links to determine which remote SRU 92 is nearest so that a low-demand video clip can be

retrieved from that remote SRU. Column 27, lines 44-53. That is, when the demand for a particular clip is low in a given region, the low demand clip may be deleted from an extended SRU 66 (within the region) and re-acquired from a remote SRU 92; the nearest remote SRU 92 being the first one queried. *Id.* See also column 30 lines 14-44 (Discusses how Kenner's PIM 64 gathers data regarding the frequency of requests for video clips to predict future usage). Thus, for this additional reason, it is respectfully submitted that a *prima facie* case of anticipation has not been established with respect to claim 26.

102 rejections—dependent claims

Dependent claim 17 was rejected as being anticipated by Kenner based on the principle of inherency. To establish inherency, it must be clear that the missing descriptive matter is necessarily present in the reference. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q. 2d 1949 (Fed. Cir. 1999). Inherency cannot be established by mere probabilities or possibilities. *Id.*

Kenner fails to inherently disclose a computer to receive web content transmissions and accompanying television broadcasts from a content provider. Merely mentioning "web content" and "video-on-demand" in the background section of Kenner's disclosure does not mean that Kenner necessarily receives the web content and accompanying video-on-demand from a content provider. For example, Kenner discusses web content in the context of web site overloaded. In a subsequent paragraph, Kenner discusses the video-on-demand. In particular, video-on-demand systems are *not* designed to store text and video, or audio visual data across multiple computer systems in a distributed network. See column 2, lines 64 through column 3, line 1. Thus, the references to Kenner relied on in the Office action fail to support the assertion of inherency. Further, the examiner uses permissive language in the rejections – "can be", which implies a possibility that a thing can be done. But, a mere possibility is not good

enough to establish inherency; the thing must be done. Therefore, it is respectfully submitted that Kenner does not anticipate dependent claim 17. Under a similar analysis, Kenner fails to anticipate dependent claim 28.

Kenner also does not anticipate claim 18. For example, with respect to claim 16, the examiner asserts that the first marker is the data in a test packet that is tracked, *i.e.*, using an analogous “ping” command. But, claim 18 calls for a computer to receive a web content broadcast with the first marker inserted within the broadcast data. Because the ping command is directed toward a specific web site, the test packet is not a broadcast as would be understood by one with skill in the art. As such, it is respectfully submitted that Kenner does not anticipate claim 18. Under a similar analysis, Kenner does not anticipate claims 29-30.

With respect to dependent claim 22, Kenner fails to disclose a computer to call a method which provides transmission details and terminates a handle. In the rejection, the examiner relies on the termination of the ping program as disclosing the aforementioned. If the handle allegedly inherently taught by Kenner is a location of memory that stores the result of the ping command, there is no indication that the memory location with the result has been terminated. In other words, in the examples provided by the examiner, the output is displayed even after the last packet is received. Thus, the alleged “handle” has not been terminated after all responses have been received. Accordingly, for at least this reason, claim 22 is not anticipated by Kenner. Under a similar analysis, Kenner does not anticipate claims 33 and 39.

103 rejections

Claim 12 was rejected as being obvious over Mao in view of Kapoor. Claim 12 has been amended to call for a device that sets a first marker in a transmission, the first marker enabled when a handle pointing to the first marker is provided. Neither Mao or Kapoor have been relied on in the Office action as disclosing a handle pointing to a first

marker. Thus, amended claim 12 is believed to be patentable over the combination of Mao and Kapoor.

Conclusion

In view of the amendments and remarks herein, the application is believed to be in condition for allowance. The examiner's action in accordance therewith is respectfully requested.

The commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0083US).

Respectfully submitted,



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